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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,492	09/08/2003	Frederic Stichelbaut	09997.0073US01	2022
23552	7590	09/20/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			ARTMAN, THOMAS R	
			ART UNIT	PAPER NUMBER
			2882	
DATE MAILED: 09/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,492

Applicant(s)

STICHELBAUT, FREDERIC

Examiner

Thomas R Artman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>24 November 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 provides for the use of a “method according to claim 1 or of an apparatus”, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 6 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Rose (WO 03/028771).

Regarding claim 3, Rose discloses an apparatus for radiation processing of packages (Fig. 1a), including;

- a) a radiation source 13,
- b) a collimator 15 having a variable aperture,
- c) a turntable (Fig. 1b), where
- d) the collimator is adapted for adjusting its aperture prior to irradiation of a package (see Table 1, p.12).

With respect to claim 4, the ratio of the collimator aperture (column two of Table 1) over the distance between the radiation source and the front face of the collimator (p.12, lines 9-10) is adjustable between 0.54 and 0.73 (adjustable range disclosed is between 0.33 and 2.0).

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With respect to claim 5, the ratio of the collimator aperture (column two of Table 1) over the distance between the radiation source and the center of the turntable (p.12, lines 11-12) is adjustable between 0.11 and 0.16 (adjustable range disclosed is between 0.09 and 0.54).

The applied reference has a common assignee and one common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claims 3-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Kotler (US 6,504,898).

Regarding claim 3, Kotler discloses an apparatus for radiation processing of packages (Fig.3a), including:

- a) a radiation source 30 (Fig.5),
- b) a collimator 110 having a variable aperture, and
- c) a turntable 70, where
- d) the collimator is adapted for adjusting its aperture prior to irradiation of a package (see Table 1, col.18).

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With respect to claim 4, the ratio of the collimator aperture (A, Table, col.18, lines 48-58) over the distance between the radiation source and the front face of the collimator (col.18, lines 35-36) is adjustable between 0.54 and 0.73 (adjustable range disclosed is between 0.25 and 0.625).

With respect to claim 5, the ratio of the collimator aperture (A, Table 1) over the distance between the radiation source and the center of the turntable (col.17, lines 49-51) is adjustable between 0.11 and 0.16 (adjustable range disclosed is between 0.09 and 1.07).

Allowable Subject Matter

Claims 1, 2 and 6 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, alone or in combination, neither teaches nor reasonably suggests a method of radiation processing of a product package, where

a) the device used has, among other claimed features, a collimator with a variable aperture and a turntable, where the method includes:

b) determining a first value of the collimator aperture by increasing the aperture from a small value where the maximum dose point is located near the center of the package to a larger value where the maximum dose point is located near the center of one of the small sides of the horizontal rectangular cross section of the package, and

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c) determining a second value of the collimator aperture by increasing the aperture further to where the minimum dose point is located near the center of the package, and

d) processing the package with a constant collimator aperture between the first and second values and variably rotating the turntable.

Claim 2 is allowed by virtue of its dependency.

Claim 6 would be allowable based upon its dependency, and further pending a successful response to the above 35 USC §101 and §112 ¶2 rejections.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peck (US 5,396,074) and Barrett (US 4,788,701) teach irradiation systems with turntables that rotate a package for irradiation as the packages are transported on a conveyor.

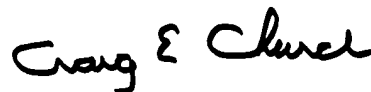
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas R Artman whose telephone number is (571) 272-2485. The examiner can normally be reached on 9am - 6:30pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas R. Artman
Patent Examiner



Craig E. Church
Primary Examiner